

**MINUTES  
ENVIRONMENTAL REVIEW COMMISSION  
December 13, 2012**

The Environmental Review Commission (ERC or Commission) met on Thursday, December 13, 2012 at 9:30 a.m. in Room 643 of the Legislative Office Building. Senator Rouzer presided.

The following members were present: Chair, Senator David Rouzer, Co-Chair, Representative Mitch Gillespie, Co-Chair, Representative Ruth Samuelson, Representative William Brisson, Representative Joe Hackney, Representative Pat McElraft, Representative Chuck McGrady, Representative Roger West, Senator Fletcher Hartsell, Jr. and Senator Brent Jackson. Mr. Jeff Hudson, Ms. Jennifer McGinnis, and Mr. Jeff Cherry, Commission Counsels; Ms. Jennifer Mundt, Commission Analyst; Ms. Mariah Matheson, Commission Assistant; and Ms. Sarah Neunzig, Commission Clerk. The following Sargent-at-Arms were present: Joe Crook, Reggie Sills, Ed Kesler and Steve Wilson. Attachment #1 and #2.

On November 20, 2012 and December 11, 2012 notices were sent to members and interested parties via e-mail. A copy of the notices is included in the attachments to these minutes as Attachment #3 and Attachment #4. Copies of the agenda for the meeting, the reports memorandum and visitor registration sheets are included in the attachments to these minutes as Attachment #5, #6 and Attachment #7, respectively.

**Call to order and introductory remarks**

Senator Rouzer called the meeting to order and welcomed members, staff, and visitors in attendance.

Senator Rouzer recognized his Co-Chair, Representative Gillespie and Co-Chair, Representative Samuelson, for introductory remarks. He then recognized Mr. Jeff Hudson, Commission Counsel, to provide an overview of the meeting agenda. Mr. Hudson reviewed the agenda and what was to be discussed during the meeting.

Senator Rouzer then asked if there were any questions and seeing none he proceeded.

**Approval of past minutes**

Senator Rouzer requested a motion to approve the minutes. Representative McGrady made the motion to accept the minutes. The Commission as a whole supported the motion and accepted the October 11, 2012 and November 15, 2012 minutes; Attachments #8 and #9.

**Annual report on the Mining and Energy Commission**

Senator Rouzer recognized Mr. Jim Womack, Chairman of the Mining and Energy Commission, to give a quarterly update and the annual report of the commission. He gave his presentation with the aid of a PowerPoint which is included as Attachment #10 and a memorandum from DENR as Attachment #11.

Representative Sameulson asked Mr. Womack to give a more detailed overview of the commission's appropriations request. Mr. Womack responded that in the recurring funds they need four additional positions filled which total \$219,413 as well as operating funds for the commission which total \$238,921. In nonrecurring funds, they need a one-time expenditure for furniture, computers, etc., which would total \$65,500. In total, for FY2013-2014 and FY2014-2015 the commission would need \$523,834.

**Air Toxics Study Report**

Senator Rouzer recognized Ms. Sheila Holman, Director of the Department of Air Quality for DENR. She gave her presentation with the aid of a PowerPoint which is included as Attachment #12 and memorandums from

DENR on the air toxics reforms recommendations and their report on inspections, audits, and examinations as Attachments #13 and #14, respectively.

Representative Gillespie asked about the exemptions regarding natural gas wells and combustion units. He wanted to know if there would be an air toxics violation when drillers flare methane after finding a pocket of natural gas. Ms. Holman responded that a flare would not be considered a combustion unit. She will review the recommendations for exclusion and get back with the chairs and the Mining and Energy Commission with their findings and new recommendations, if any.

Representative Samuelson asked if the downward trend in the presence of air toxins in North Carolina has any correlation to the economy. Ms. Holman responded that a small portion of the downward trend is due to plant closures, but the majority is due to the increased air toxins regulations and the plants following these new regulations.

### **Solid Waste Permit Study Report**

Senator Rouzer recognized Mr. Michael Scott, Section Chief of the Solid Waste Section, Division of Waste Management, DENR. He gave his presentation with the aid of a PowerPoint which is included as Attachments #15 along with a memorandum from DENR giving recommendations on solid waste fee adjustments as Attachment #16.

Representative Samuelson asked about the difference between the two time frames of permitting, 5 and 10 year. Mr. Scott explained if an entity chose the 10-year permit, some consultants expect a cost savings due to the mobilization cost of obtaining the permit. Another factor is the longer permit time allows a 5-year review, which allows the entity to not feel as though they are always in a permitting cycle.

Representative Samuelson asked if the changed definition of a major modification was excluded, what would happen to the permitting process. Mr. Scott gave a hypothetical scenario explaining the entity would have to file for a permit amendment, which results in a higher cost to the entity. Some changes will require an amendment to the permit, but in an attempt to lower costs they are going to offer the major modification as well.

Representative Brisson asked what kind of impact this will have on the cities and counties that have contracts with landfills. Specifically, he wanted to know if the fee is based on 100,000 tons per year, overall tonnage, or just a one-time fee. Mr. Scott replied the Division has focused on the impact to local governments while most of the discussion has been from the private sector. They are not proposing any fee changes on the current 5-year permit, so there should be no impact; if the county chose the 10-year permit they would have to conduct their own cost analysis to determine if there is a potential cost savings.

Representative Brisson asked a follow-up question regarding whether the change in the permit fee schedule was revenue neutral. He then asked specifically about the large landfill in Sampson County and its permitting volume, and if the additional cost would be passed to the consumer. Mr. Scott stated that Sampson County is in the category of 'greater than 100,000 tons per year', thus they pay the current fee of \$30,000 every 5 years. The reasoning is because their tonnage is in that specific category and all the fees paid go into the solid waste program account. In the recommendations, the 5-year or 10-year permits result in the entity paying the same amount.

Representative Samuelson asked about the differences in types of landfills, specifically industrial landfills. Mr. Scott explained that sanitary landfills include municipal solid waste landfills, construction demolition landfills, and industrial landfills. In North Carolina, there are 16 industrial landfills, mostly for the power industry, coal ash, pulp and paper, and one specifically for battery products.

Senator Jackson asked why the upfront fee for a 10-year permit is more expensive than 5-year permit. Mr. Scott responded the reasoning is due to using the current staff for both 5 and 10-year permits, whereas the 10-year permit requires more up front work by his staff than the 5-year permit. This change does not propose any

additional permitting staff; moreover it is a representative of the work that needs to be done and the funds necessary to carry out the work to perform these tasks.

Senator Jackson asked a follow-up question of why there is more work for a 10-year permit than a 5-year permit. Mr. Scott explained that staff, when working on a 5-year permit, looks at an engineering design, soil, and a geological study. For example, they could be dealing with regional landfills of 200+ acres. They are referring to it as if the staff would be reviewing all of the information for the facility at the onset of the permit. As one could imagine, doing this work for a 10-year phased construction will be higher than that of a 5-year phased construction.

Senator Jackson asked Mr. Scott how many industry representatives had been involved in discussions of proposed fees. Mr. Scott responded the group was made up of seven people. He stated they are also sending this information to additional people in private industry as well. To date, they have not received a lot of feedback about the 10-year permits. He did explain most of the facilities they are dealing with are multi-million dollar operations, and a difference of \$28,000 is not a lot in the larger scope of their business.

## **Commission Report and Legislative Recommendations to the 2013 General Assembly**

Senator Rouzer told the committee will review some proposed legislation and have Mr. Jeff Hudson review each section for the committee. They will then vote on each section individually. Ms. Jennifer McGinnis and Ms. Jennifer Mundt also gave some overview of the proposed legislation for the committee. The legislative recommendations discussed below are included as Attachment #17.

### **Adjust Landfill Permit Fee Timing**

Mr. Hudson discussed and gave an overview of the proposed legislation to the committee; Senator Rouzer then asked for a motion from the commission.

Representative Samuelson moved for a favorable report to the General Assembly.

Senator Jackson asked about the fee schedule for 5 and 10-year permits and stated he did not believe the intent of the law was being executed.

Representative Gillespie responded to Senator Jackson, stating there has not been any opposition to the schedule and after much research he feels it should be recommended to have the opportunity to be debated in House and Senate committees during the next session.

Senator Rouzer brought the motion to a voice vote; all members were in favor, except Senator Jackson who voted 'no'.

### **DENR Support for Regional Water Supply System**

Mr. Hudson discussed and gave an overview of the next portion of proposed legislation to the committee. In addition to the proposed legislation, a bill draft for water legislation is included as Attachment #18.

Representative Hackney asked if this new process make a voluntary action now mandatory. Ms. Robin Smith responded by stating the department has reviewed the language and does not have any problems. She added, the underlying structure of that provision means that the department has already participated in the identification of the preferred alternative.

Representative McGrady moved for a favorable report to the General Assembly. Senator Rouzer asked for any further discussion. The motion was brought to a voice vote; all members were in favor, except Representative Hackney who voted 'no'.

### **Bernard Allen Fund Modification**

Representative Samuelson asked if we are using the full amount of the Bernard Allen Fund. Mr. Dexter Matthews responded stating they are having difficulty expending the funds because of the restrictions in the statute. The

proposal will allow them to expend the funds where they need, if local governments do not want to extend service to areas for a few residences.

Senator Rouzer asked for any discussion. Representative Gillespie moved for a favorable report to the General Assembly; the committee passed the motion unanimously.

Representative Gillespie gave background information, stating that the state has had a long-standing issue of trying to clean up orphan sites. He made a motion to recommend to the General Assembly an appropriation of \$500,000 for cleanup of orphan sites and alternative drinking water. Currently, the program has \$400,000 from the scrap tire tax. The State has approximately 324 sites, increasing by 55 sites per year. He estimates the additional appropriation would address about 25 sites per year.

Representative Samuelson commented about the confusion they had about the Bernard Allen Fund at previous meetings. She asked if Mr. Matthews could discuss fund Representative Gillespie's motion would address. Mr. Matthews explained the two funds: The Bernard Allen Fund provides water to low-income families, where the Inactive Hazardous Waste Fund goes beyond water. The particular fund that Representative Gillespie is referring to is the Inactive Hazardous Waste Fund.

Mr. Hudson reminded the commission that because there is no document before the members stating the request, it will be included as a separate recommendation in the final report.

### Amend Environmental Laws 2013

Ms. Jennifer McGinnis explained this recommendation to the commission.

Representative Samuelson asked where the language came from and Ms. McGinnis responded saying it came from DENR.

Senator Rouzer asked for any discussion; seeing none, Representative Samuelson moved for a favorable report to the General Assembly. The commission approved the motion unanimously.

### Uranium Mining Resolution

Ms. Jennifer Mundt discussed the letter and the instruction to draft the letter from the November ERC meeting. The proposed letter is included at Attachment #19.

Representative Samuelson stated that the legislative process in Virginia is ahead of North Carolina's legislative process and we want to make sure that the Virginia General Assembly is aware of our concerns while they are considering the issue of allowing uranium mining.

Representative McGrady asked if the resolution references the Roanoke River Basin Bi-State Commission. Mr. Hudson responded that the Commission was dormant for a number of years after it was established, but that it has recently become more active, perhaps due to this issue.

Representative McGrady thanked the leadership for their work on this and made a motion for a favorable recommendation of the resolution and letter.

### Sedimentation Control/Financial Assurance

Ms. Jennifer McGinnis explained this recommendation.

Representative Gillespie discussed that the commission should not move forward with this, because their intent was to only move forward with unanimous decisions. He asked that they use it for informational purposes only to members.

Ms. Lisa Martin from the Homebuilders Association was then recognized to speak. She told the members of the commission that on behalf of North Carolina homebuilders they are opposed to the proposal. There is a situation in

the mountains in which the builder went bankrupt. However, this doesn't apply to all builders and this would negatively impact all builders for the actions of a few.

Representative Gillespie then stated to the commission that he had met with DENR regarding water legislation for regulatory reform. They are trying to figure out how to move forward with the issue and he will be filing a placeholder bill that will be worked out in the months in the future.

Senator Rouzer asked if any members had comments. Seeing none he moved to the next item.

#### Environmental Review Commission Report to the 2013 Regular Session

Representative Samuelson made a motion to approve the report, which was approved unanimously.

#### **Commission discussion and announcements**

Senator Rouzer thanked the members and staff and opened the floor for comments from the commission.

Representative Gillespie introduced Emily Wilson, a new House policy advisor on Speaker Tillis' staff. Representative Gillespie then gave an overview of his work on the water legislation he had mentioned earlier in the meeting and his outlook for this legislation.

Senator Rouzer recognized both Ms. Robin Smith and Ms. Kari Barsness and thanked them for their service pending their upcoming departures. He then took a moment to thank the members for letting him serve on the ERC and he hopes to see them in the future.

#### **Adjournment**

The meeting was adjourned at 11:25PM.

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Chair Senator David Rouzer

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Co-Chair Representative Mitch Gillespie

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Co-Chair Representative Ruth Samuelson

Attest:

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Sarah Neunzig, Committee Clerk